

**‘Any Which Way But Loose: Social Partnership and
the Law in Ireland’.**

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Introduction

This paper seeks to assess the experience of the social partnership era in Irish industrial relations (IR). It will focus on the implications for unions and IR actors generally of the distinctive mix of voluntarism and institutionalisation represented by the social pacts, where a ‘problem-solving approach designed to produce consensus’ has been adopted, and an open-method of coordination, emphasising ‘soft’ regulation rather than hard law has been preferred to a Continental approach relying on laying down specific rules and procedures.

Section 1 explains how Irish IR actors have attempted to shift from the Anglo-Saxon model of IR to a more Europeanised model, highlights the legal position of Irish trade unions and outlines briefly the form and content of the SPAs (Social Partnership Agreements) to date. Section 2 will then show how the SPAs represent a new form of public policy making and administration, based on ideas of soft law and deliberative democracy. Finally, we will look at the implications of this for unions and the Irish IR system.

The Europeanisation of Irish Industrial Relations

The Irish IR system has traditionally been based on that of the UK. The main features of the Anglo-Saxon model are that it is an adversarial, voluntarist system; by contrast, in much of continental Europe the language of ‘social partnership’ is so embedded as to be used almost unthinkingly (Hyman, 1995). In the Nordic countries, for example, the key focus is on the primacy of consensus as against conflict. The unqualified ideological commitment to market liberalism found in Britain and the U.S., too, is not matched in most of continental Europe where both social-democratic and Christian-democratic parties tend to view ‘status’ as well as ‘contract’ as necessary foundations of socio-economic life. There is a conceptual and ideological bias towards the recognition of collective identities, which is informed and in turn supported by politico-legal norms; ‘particularly in the Germanic countries, the articulation between state and civil society rests on collective associations’ (ibid: 40).

In terms of legal regulation of the labour market and IR generally, it is common to classify national regimes into 3 categories (Teague, 2001): *Roman-Germanic* (state has active and central role in labour market organisation-generally collective agreements are extended to all workers in the sector; The Netherlands, France etc); *Anglo-Saxon* (relative absence of state intervention in employment relations, no extension of agreements to the non-union workplace); *Nordic* (comprehensive regulation based on voluntary agreements between strong collective organisations within the framework a very developed welfare state, eg the Ghent system in Denmark).

Legal Regimes

<u>Anglo-Saxon</u>	<u>Nordic</u>	<u>Roman-Germanic</u>
Relative absence of state intervention in emp rels, no extension of agreements to non-union workplace	Comprehensive regulation based on voluntary agreements between strong collective organisations, Highly developed welfare state, (Ghent system)	State active and central role in LM organisation- generally CAs are extended to all workers in the sector,
UK, Ire	Sweden, Denmark	Germany, The Netherlands, France

The legal position of Irish trade unions:

- Fundamental principle=voluntarism, absence of legally imposed structure
- Constitution: Article 40.6.1.iii.protects freedom of association BUT no right to recognition, no specific recognition of the right to strike, freedom of DISsociation
- No statutory duty to recognise unions (disputes referred to labour court whose recommendations are generally non-binding). High level group under P2000 set up to examine issue.
- Result=Code of Practice on Voluntary Dispute Resolution and Industrial Relations (Amendment) Act 2001-labyrinthine procedure on recognition, key is that it remains a *voluntary* procedure.

The 1980s saw very different trajectories for Ireland and the UK. In the UK, you see the Thatcherite attack on the unions. In Ireland, you see a centralisation¹ of IR. Since 1987, Ireland has had 6 centralised agreements:

<u>Agreement</u>	<u>Context</u>	<u>Content</u>
1987-1990 PNR	Crisis, unemployment, Thatcher	Pay moderation for tax concessions
1990-1993 PESP 1993-1996 PCW	EMU, jobless growth	Welfare reform, supply side policies
1996-2000 P2000 2000-2003 PPF	Economic boom, full employment	Introduction of community and voluntary sector, Workplace partnership
2003-2006 SP (*pay renegotiated in 18 mnths)	Gloomy economic climate, slowing growth, job losses	Pay deal only for 18 months, ‘Special Initiatives’

¹ Although some of the agreements have merely provided a framework within which local level bargaining takes place (PESP, PPF etc)

So, essentially the agreements offered pay moderation for tax concessions; the government contracted to address supply side issue (training, infrastructure) with the social partners and to reform welfare (health, housing). THE AGREEMENTS ARE NOT LEGALLY BINDING. The non-union sector was not covered (MNCs etc) but benefited from stable IR/macro economic climate, and the investment in infrastructure etc.

Who needs the law? Deliberative Governance and Problem-Solving.

One of the central arguments of this paper is that the SPAs represent a new form of public policy making, in which there is a growing awareness of the interconnectedness of policy making in different spheres (Goetschy, 2000). Inger-Johanne Sand (1998) has argued that the globalisation of market economy, communicative technologies and other knowledge based structures have contributed directly to changes in the organisational patterns of public institutions; ‘the end of state monopolies’. Now, public and legal institutions have an increasing number of highly diverse and complex tasks. This has resulted in the transformation from a set of more or less stable institutions working together as *separate but hierarchical structures* to a system of governance that relies more on the *relations and dynamics* between its institutions; governance is emphasised as *dynamic and processural*, with a thick *interdependence* between institutions.

SO, in looking at modern governance we see a shift in focus from:

- Institutions > processes and dynamics
- Separate processes > combinations
- Institutional continuity > change and DIScontinuity

Furthermore, we see a change in the themes and objects of regulation, where the emphasis now is on:

- Specialised knowledge and technology-based discourse
- Trans-border/trans-institutional forms of communication

These require:

- Co-operation with professional/scientific communities
- Fact-finding and deliberative methods of decision-making
- Audits and assessments (monitoring is key)
- Transparency (public assemblies)

SO, drawing on Cohen and Sabel (1997) we see a shift from *aggregative* (peoples’ interests are given equal weight in reaching a binding decision) to *deliberative* democracy (decisions to be supported by reasons acceptable to others); *representative* (citizens choose legislators to decide on the substance of public policy) to *direct* democracy (citizens authorise public action by deciding on the substance of public policy).

Many of these issues feature strongly in the literature on policy making in the European Union, particularly in the area of labour market regulation (see, *inter alia*,

Teague, 2001; O'Hagan 2002; Pochet and Fajertag, 2000). The EU rarely lays down 'tablets of stone' for national labour law regimes, but nevertheless creates important frameworks for the development of domestic employment rules.² Particularly apposite for this paper are the following concepts:

- *Engrange*: the deepening of interactions between national administrative structures and EU institutions, generally played out informally
- *Cosmitology*: the use of technical committees and expert policy networks in the decision making process. National civil servants meet regularly and so begin to define a European policy agenda, a Europeanisation of national policy officials

What I wish to emphasise here is the 'socialisation' aspect; the positive feedback loops associated with repeated interactions. The idea is that actors alter pre-existing preferences, expectations and behaviour, with the result that an interdependence is forged between governments, social institutions and civic actors.

The argument advanced here is that the Irish social partnership process can be seen in a similar light.

Characterisation of Social Partnership (NESC, 1996).

- Combination of consultation, negotiation and bargaining
- Interdependence between the parties
- Problem-solving approach designed to produce consensus
- Involves trade-offs between AND within interest groups
- Involves a range of participants on various agenda items

O'Donnell (2000) has identified three dimensions of partnership: functional interdependence, bargaining and deal-making (based on traditional social partner power), solidarity, inclusiveness and participation (incorporating a variety of different viewpoints) and a process of deliberation. The latter is key as it has the potential to shape and reshape the parties understanding, identity and preference. Crucial is the adoption of a problem-solving approach. A feature of effective partnership is that the partners do not debate their ultimate social visions; this means that consensus and shared understanding, rather than being a *pre-condition* for partnership are more likely to be an *outcome*. Each side can give credible commitments and in doing so build trust (Teague, 2001). Social partnership, thus has a dual role, to legitimise fundamental social change and confer up-front benefits on companies, employers, workers and the public generally.

Under the various partnership agreements a host of bodies, working groups, and task forces have been set up (23 under the PPF alone; Turner, 2002). Examples include:

- NESF (1993)-inequality and long term unemployment
- NESC (1996)-membership widened to include the voluntary sector

² The EWC Directive, for example, though weak, may allow the Europeanisation of national systems of corporate governance

- Local Authority National Partnership Advisory Group-supports the implementation of workplace partnership in the local government sector in Ireland
- NCPP- Implementing the Health Strategy through Partnership
- Local Area Partnership on social exclusion and disability
- Special Initiatives on housing, inflation etc

In all these areas, policy goals are agreed upon and implemented through the use of an open method of coordination that supports structures over rules and procedures, problem solving over distributive bargaining, and enabling frameworks over binding agreements. Throughout the partnership process a clear evolution has occurred (O'Donnell and O' Reardon, 2000); a shift in *content* (from macroeconomic to structural and supply side issues) and *method* (from high level negotiations to working groups, for a, multilevel problem solving).

The State, Trade Unions and Social Partnership

This method of policy making has resulted in much changed roles for the social partners and the government. For what O' Riain (2000) has termed the 'flexible developmental state', the important role is to:

- nurture post fordist frameworks of production and innovation,
- attract foreign direct investment and,
- link local and global networks to promote development.

The state does not directly drive development, but shapes the capacity of the society and market to do so through its 'midwife and husbandary' role; by creating ties between flexible state agencies (that are independent but accountable) and business and other market actors. The state's role, then, is to monitor, facilitate, and to aid communication between and among interest groups.

This new role for the state, like the partnership model itself, is not without its critics. O' Cinneide (1998) has argued that 'participation and consultation' effectively means that policy making is not conducted in the open in Dail Eireann by elected representatives, but by organised interests behind closed doors. He gives the example of Area Development Partnerships under the PESP, which involved the social partners, representatives of state agencies and voluntary and community organisations, but no elected local representatives (ibid: 47). He argues that the social partnership model is unconstitutional, because it involves a shift in power from elected representatives to full time officials and interest groups, who present the agreements as a *fait accompli* to the legislature.

There has also been a profound shift in the role of the unions (Goetschy, 2000). The pacts have demanded that the unions act to:

- justify major societal changes to their grassroots (welfare reform, more flexible labour markets etc),
- to imbue their members with a real culture of patience and educate them about the links between different sets of claims (wage restraint and job creation for example),

- at local level, union reps need to shift from negotiation to consultation; the stock in trade of continental unions. This requires force of argument /technical competence as opposed to ‘muscle’

Again, this new role has been the subject of some fierce criticism. Allen (2001) has argued that the SP structures have provided a political, industrial and ideological framework through which a neo-liberal agenda could be pursued. He is particularly critical of the unions who, he argues, have allowed deregulation of all items of national economy except pay; where workers exercise wage restraint in exchange for getting ‘a say’ in policy-making.

How have the unions fared under social partnership³?

Positives:

- The genuine fear of a Thatcherite attack on trade unionism was a major factor in entering partnership. This has not occurred and indeed, the prestige of the ICTU has been enhanced by the process; access to political arena regularised and institutionalised
- Economic boom and full employment
- Increased membership
- Widening of bargaining agenda beyond pay and conditions

Negatives:

- Concern that while top-level (horizontal) links have developed, linking structures below peak level (vertical links) are weak
- Increased inequality
- Falling density
- Question as to the legitimacy of unions to negotiate public policy in certain areas (educational disadvantage, waste management etc)

Union attitudes

Survey evidence (Geary and Roche, 2002, D’Art and Turner, 2002) suggests:

- Social partnership has benefited employers and the government more than workers
- Union effectiveness at national level showed little change
- The effectiveness of workers own union at the workplace had declined

Interview Data

“I actually think, there’s an irresistible argument in favour of social partnership... But, I think what we have is not social partnership, it’s the old-fashioned national wage agreements, with a whole heap of other stuff that you’d need a career break to

³ Arguments around the merits and demerits of partnership would require far more space than is available here to even outline, never mind assess. The above merely represent a few of the more oft-quoted.

even read... it's very aspirational, and it's very, kind of, 'the equality we all want, and eliminate discrimination and disabled people have been treated shamefully... But when it comes to changing the damn thing, when it comes to making buses that disabled people can get on and off, I don't see too many of them around" (MANDATE official⁴)

"What we want, what the unions want... is a civilised relationship, decent working conditions and not sort of war, war, war everyday. What employers want is peace, industrial peace... and what government want is industrial peace and they don't give a shite much after that what happens to anybody, as far as I can see. So we don't all want the same things" (MANDATE official)

"I do think... that centralised bargaining as its called has damaged involvement to a great extent. I mean, every three years you get a bit of paper and you stick yes or you stick no on it (as most of our members do), and you hop it in the box. And to a great extent that's the height of your involvement with social partnership" (MANDATE official)

"Has there been an impact on union management relations from partnership?"
Not really any different... I'd question if there's any change under partnership" (IBOA member⁵)

"How do you view the national partnership deals?"
The way I view it we got hammered in 1992 by the bank SO partnership has been beneficial to us. It, at least, guaranteed SOME rise to cover the cost of living. The union mightn't have been as strong on its own. Maybe I'm wrong..." (IBOA member)

"the downside is that... the improvements that we can point to are appreciated by the people who pay attention to these, like economists or politicians or fellas like yourself, or meself but I don't know if the vast majority of the members see it that way. Somehow, I think that they don't... being able to point backwards and simply say 'well, you know, we were part of the Celtic Tiger that created this'. I think people go 'ahh, sure that wasn't you at all, that was the government'... for instance, say the tax concessions. We would very deliberately negotiate them. You can see, anybody can see this. But when somebody gets their new tax cert it doesn't say 'as negotiated by the TUM'. And the vast majority of our members, they don't relate to that at all." (SIPTU official⁶)

IR environment

There has never been an anti-union public policy in Ireland, the union's legitimacy has not been challenged by any political party (even the PDs), and public attitudes to unions generally are extremely positive (O' Kelly, 2000). However a crucial factor in the Irish story is the importance of foreign direct investment (FDI), and in particular US MNCs.

⁴ MANDATE have been traditionally hostile to SP

⁵ Traditionally supportive of partnership, the IBOA has voted overwhelmingly to reject Sustaining Progress

⁶ SIPTU have been supportive of SP

Employer resistance/union avoidance:

- Up to 1980s IDA pushed a pro-union policy ('sweetheart deals')
- NOW, Ireland sold as non-union environment, legal intervention in IR ruled out as endangering inward investment
- MNCs (especially in hi-tech sectors) more likely to not recognise unions
- 1990s evidence suggests a broader diffusion of union avoidance to Irish and other foreign, non-US firms, and in a broader range of industrial sectors (Gunnigle et al, 2002)
- Labour Court recommended recognition in 75/81 cases-compliance in 30% of these (far below the compliance rate for other disputes; *ibid.*)

Enterprise Partnership: Chapter 9 of Partnership 2000 was devoted to the need to develop partnership at the workplace level. ICTU encouraged its affiliates to move away from an adversarial IR model towards a new role as 'business partners' committed to quality improvement. The importance of workplace partnership for unions must be stressed. In an era of declining union penetration, the TUM has had to seek mechanisms to increase their legitimacy at both enterprise and national level (ICTU, 1995)

- P2000 and PPF-defined EP and identified 9 particular areas (work organisation, financial involvement, life long learning etc)
- However, the evidence to date suggests little has been achieved (Gunnigle, 1997; Roche, 2000). *Operational partnership* (union/employee involvement in management decisions regarding issues like work organisation) tends to predominate over *strategic partnership* (providing for union/employee involvement in top level corporate decision-making)
- The penetration and depth of partnership and workplace innovation in Ireland is extremely limited (*ibid.*). In unionised workplaces, the findings indicate that unilateral management decision-making remains the most common approach to handling change, and management prerogative and collective bargaining combined by far predominate over collaborative production

Interview Data

"How do you feel about partnership? Is there a workplace partnership agreement here?"

How do you mean?" (IBOA member)

"Is there a workplace partnership agreement here?"

How do you mean?

A deal negotiated with management by the reps here, for this workplace?

No. We come in, work our asses off and go home at night." (IBOA rep)

(refers to recent case he dealt with) "...a company with family friendly policies-she couldn't go from full time to part time so she could mind her newborn child. Couldn't even get an answer from the employer...a year later, she had to say 'well, fuck ya, I have to go and mind the child, stick your job.' When I see that, I think 'social partnership, where is it? I'd love it. Please, show it to me.'" (MANDATE official)

Conclusions

The social partnership model appears to be under stress. O' Donnell (2001) has catalogued a series of problems facing the participants. This paper has attempted to outline that partnership has involved a shift to a new form of problem-solving governance and policy making, that relies on coordination and 'soft law'. This paper has focused on the implications of this for trade unions. The (tentative) evidence to date is not encouraging; the success of the union leadership in 'selling' this new approach to their members is in question. The quote from the SIPTU official above, for example, illustrates the problem of democratic accountability. In the 'deliberative governance' model many policies arise from administrative agencies, bodies, task forces etc (including unions) that are independent of representative political structures. However, while certain properties of deliberative governance are emerging, people still measure acceptability/legitimacy against the 'majoritarian' principles of parliamentary democracy (Teague, 2001). It is for the union leadership (and social partners) to outline the benefits and advantages of the more subtle form of governance outlined above.

The section above described how there is a real danger of the union elite becoming divorced and distant from its membership; there is clear evidence of growing rank-and-file disenchantment with the partnership process (indeed there has always been a significant majority opposed to partnership-Sustaining Progress has passed with much rancour and significant dissent). It has been suggested that an important factor in this is the failure to establish meaningful partnership structures at enterprise level-to make partnership concrete for the rank and file. This in turn has been linked to evidence of increased employer resistance and union avoidance.

This takes us back to where we started; the Anglo-Saxon voluntarist IR system. Although there seems a genuine desire among many of the Irish IR actors to move away from adversarialism, there is an inherent contradiction in the government, Janus-like, offering unions a seat at the top table, and then pursuing an industrial policy that makes it extremely difficult for unions to recruit at company level⁷. There has been a significant shift towards a 'Europeanisation' of Irish IR, but the issue of union recognition remains key. Even the UK now has legislation on mandatory union recognition; until Irish unions can achieve the level of workplace institutionalisation that is common to most other EU nations, the contradictions inherent in the partnership strategy will continue to manifest themselves.

⁷ For example, the Irish government, while espousing its support for enterprise partnership at the same time joined with the British in opposing the Information and Consultation Directive, which seeks to ensure employees are kept informed of developments affecting their work/company.

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